IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 34011 of 2006(Y)

PETITIONER:

M/S.ASWATHY SPUN PIPES, DEVELOPMENT AREA, AROOR, ALAPPUZHA REPRESENTED BY ITS MANAGING PARTNER.

BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY SECRETARY (TAXES), DEPARTMENT OF REVENUE, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.**

3. **THE DEPUTY COMMISSIONER OF SALE TAX, ALAPPUZHA.**

4. **THE COMMERCIAL TAX OFFICER (AUDIT ASSESSMENT), ALAPPUZHA.**

BY GOVERNMENT PLEADER SRI.V.V.ASOKAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN, J.

W.P.(C) NO. 34011 OF 2006

Dated this the 20th day of December, 2006

J U D G M E N T

Petitioner who is an assessee under the KVAT Act is challenging Exhibit P3 assessment order passed by the Commercial Tax Officer, 4th respondent herein whereby he treated Spun Pipes manufactured and sold by the petitioner as an item falling under SRO 82/06 and assessed him to tax at 12.5% rejecting his contention that this is assessable only at 4% and includable under Entry 99 of the IIIrd schedule of KVAT Act. It is his specific contention that, by Exhibit P4 the Commissioner of Commercial Taxes having issued a clarification departmentally that spun pipe is a cement product like pre-stressed concrete poles and ready mix concrete falling under Entry No.80 in SRO 82/06, the alternate remedy of appeal will be ineffective as the appellate authority may be swayed away by the view expressed in Exhibit P4

2. Special Government pleader appearing on behalf of the state would submit that Exhibit P4 is not a clarification issued under Section 94 and as such the Assessing Officer or the

appellate authority as the case may be, independently can consider the contentions and arrive at a decision de hors Exhibit P4. The same is recorded.

3. In the factual circumstances, the petitioner is relegated to the statutory remedy available to him. He can approach the appellate authority by filing an appeal within a a period of three weeks along with remittance of 1/3rd of the assessed amount in which case the appellate authority will consider the contentions of the petitioner untramelled by Exhibit P4 and take a final decision. Recovery proceedings for the balance amount pursuant to Exhibit P3 will stand stayed till the appeal is disposed of.

Writ petition is disposed of as above.

Issue photocopy.

P.R.RAMAN, JUDGE

Rp